



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

Promoting the wise use of land – Helping to build great communities

To: Board of Supervisors

From: Kami Griffin, Acting Director, Department of Planning and Building

Date: August 27, 2013

Subject: Hearing to consider Urgency Ordinances pursuant to Sections 25123, 25131 and 65858 of the California Government Code that would (1) establish a moratorium on new or expanded irrigated crop production and new development dependent upon a well unless such uses offset their total projected water use, (2) establish certain exemptions, (3) require the installation of a meter on new wells and/or (4) establish a moratorium on approval of new ponds, reservoirs and dams other than those allowed by Section 22.52.070.C.2.b of Title 22 of the County Code, for properties located within the unincorporated areas of San Luis Obispo County of the Paso Robles Groundwater Basin except those properties within the Atascadero Sub-Basin. Districts 1 and 5

RECOMMENDATION

That your Board:

1. Consider and adopt the Urgency Ordinance (Attachment 2A or Attachment 2B).
2. Direct staff to provide notice of a further hearing on the ordinance pursuant to Government Code Section 65090 as required by Government Code Section 65858. The further hearing would be held before the ordinance expires and will allow the Board to extend the ordinance beyond 45 days if it chooses to do so at that time.

DISCUSSION

Background

On August 6, 2013, your Board directed staff to prepare two Urgency Ordinances. Both ordinances would establish a moratorium on new or expanded irrigated crop production, conversion of dry farm or grazing land to new or expanded irrigated crop production, and new development dependent upon a well in the Paso Robles Groundwater Basin unless such uses offset their total projected water use by a ratio of 2:1. The ordinance also requires the installation of meters on new wells associated with the above uses. The ordinance specifies uses that are not subject to the ordinance and includes exemptions including replacement wells for any of the prohibited uses. The ordinance also includes a moratorium on approval of new ponds, reservoirs and dams other than those allowed by Section 22.52.070.C.2.b of Title 22 of the County Code (those designed to contain no more than one acre-foot of water).

One ordinance would cover all properties located within the unincorporated areas of San Luis Obispo County of the Paso Robles Groundwater Basin except those properties within the Atascadero Sub-Basin and the other ordinance would cover a smaller area within the Basin that represents the area with the greatest change in groundwater elevation.

Summary of Ordinance by Section

Section 1 - includes the required findings for adoption of an Urgency Ordinance.

Section 2 – Specifies where the Urgency Ordinance would apply. Attachment 2A is the ordinance that would apply to all properties located within the unincorporated areas of San Luis Obispo County of the Paso Robles Groundwater Basin except those properties within the Atascadero Sub-Basin. Attachment 2B is the ordinance that covers a smaller area within the unincorporated areas of San Luis Obispo County of the Paso Robles Groundwater Basin that represents the area with the greatest change in groundwater elevation.

Section 3 – Identifies the definitions for terms that are used in the Urgency Ordinance.

Section 4 – Sets forth the uses that are prohibited by the ordinance. This section sets forth that neither a well permit nor a construction permit can be issued for these prohibited uses except in conformance with the terms of the Urgency Ordinance.

Section 5 – Identifies uses and other categories of projects that are not subject to the Urgency Ordinance. This includes irrigated agriculture and irrigation practices that exist as of today's date, as well as a very broad category of pipeline projects. More information about pipeline projects can be found later in this staff report.

Section 6 – Exempts certain uses that would otherwise fall into the category of uses that are prohibited. This includes proposed multi-family uses. The need for this exemption comes from Government Code Section 65858 that requires very specific findings if an Urgency Ordinance has the effect of denying approvals needed for the development of multi-family housing. Multi-family projects would only be allowed within the Residential Multi-Family land use category located within Urban Reserve Lines served by urban level services (community water and sewer). As the number of these properties located within the area covered by the Urgency Ordinance is small, and the required findings are difficult to make, it is recommended that multi-family development be exempted from the Urgency Ordinance.

Section 7 – This section sets out the procedures for a project to show that the 2:1 offset has been met. Before a well or construction permit can be issued, an Offset Clearance must first be issued. In addition, this section sets forth the requirement for metering. This section also applies the standards set forth in the Urgency Ordinance to discretionary permits.

Section 8 - sets forth the restriction on new agricultural ponds that are designed to hold more than one acre foot of water.

Section 9 - establishes the procedures for enforcement of the Urgency Ordinance.

Section 10 - is the standard severability clause.

Section 11 - establishes the effective date of the Urgency Ordinance as today and that the ordinance is valid for a period of 45 days unless extended.

Area of Concern

The Urgency Ordinances proposed in Attachments 2A and 2B are identical with the exception of where the ordinances are applicable. The Urgency Ordinance in Attachment 2A covers the entire Paso Robles Groundwater Basin within the unincorporated area of San Luis Obispo County except the Atascadero sub-basin (Exhibit 2A). This is the same area that has a certified Level of Severity III in the County's Resource Management System.

The Urgency Ordinance in Attachment 2B would be applicable only in the area that has been determined to have the greatest change in groundwater elevation. Staff is proposing to define this area using the information in the map that shows the change in groundwater elevations. The areas that show the greatest change would be outlined using man-made and natural landmarks such as rivers, roads, section boundaries, and the edge of the Atascadero sub-basin. However, in order to base the mapping on these natural and made-made features, the area does not incorporate all of the areas that have shown the greatest change in groundwater elevations and also includes areas outside of this area. The map shown in Exhibit 2B is for illustrative purposes only. If this area is chosen, a layer would be created in the County's GIS mapping so that it would be possible to tell whether a specific property falls within the area.

Pipeline Projects

The Urgency Ordinance proposes a very broad definition of "pipeline projects" that would not be subject to the standards of the Urgency Ordinance. As described earlier, any irrigated crop production and any irrigation practices that are in place today can continue and are not subject to the requirements of the Urgency Ordinance.

Any application for a land use permit, land division, amendment, construction permit, grading permit or well permit submitted prior to today's date would not be subject to the Urgency Ordinance. As of August 12, 2013, there are approximately two General Plan Amendments, 10 land division applications, 13 land use permit applications four major grading permits for large agricultural ponds, 150 construction permits and 129 well permits that have been submitted but not issued.

In addition, sites that have been prepared for planting, but where the planting has not been completed would also not be subject to the Urgency Ordinance. Also, where a property owner can provide evidence that financing or other written contractual commitments were entered into prior to today's date for site preparation, planting, or sale of product, those new or expanded irrigated uses would also not be subject to the Urgency Ordinance. It is difficult to know how many sites have financial or contractual commitments, as these are private transactions. However, exempting these sites from the Urgency Ordinance recognizes that there may be these types of existing obligations.

Water Savings

Questions about the amount of water that could be saved as a result of the Urgency Ordinance were raised at the August 6, 2013 meeting. It is challenging to determine precisely how much water would be saved by requiring new development and new irrigated crop production to offset their water use by 2:1. Water savings occur through prohibiting new crop production and other types of development that rely on the groundwater. To determine the potential water savings that could occur from these prohibitions and the requirement for offsets can be done in several ways. Because neither agricultural water use nor residential or other development's water use is metered, monitored or reported, all of these estimates and projections are based on assumptions of either crop acreages and water demand per acre or rural residential pumping projections from the 2010 Resource Capacity Study. The calculations and assumptions are shown in Attachment 2C.

Implementation

The issue of the complexity of implementing the Urgency Ordinance Basin wide versus a smaller area was raised at the August 6, 2013 meeting. Implementation of the Urgency Ordinance includes the preparation of the Approved Water Conservation Program that would set forth how the offsets would be accomplished. Although we know much about establishing and implementing an offset program for residential and other structural types of development, to date, staff has been unable to find any examples of an offset program for agriculture. Thus, developing a program could require a significant amount of time, funding, and consultant and staff resources. In addition, implementing the program will also require funding and staffing resources.

In general, any offset program would need a large enough area from which a project would find offsets. For instance, in order for a residential offset program to be successful, there needs to be enough housing stock available to replace higher water using lavatories, showerheads and faucets with low water using models. If there isn't enough older housing stock available, then it becomes more difficult, if not impossible, for an individual to meet the required offset. Having the Urgency Ordinance apply to a smaller area may result in this issue, probably not for a residential program, but for an agricultural program.

As to enforcement of the Urgency Ordinance, it is difficult to know whether it would be easier to enforce the Urgency Ordinance over a smaller area rather than a larger area. However, given the Department's limited code enforcement resources, only complaint driven cases would be investigated, as opposed to performing pro-active enforcement.

Economic Impacts

A question as to the economic impact to property owners and to industries of a proposed Urgency Ordinance that would prohibit new developments or land uses which would result in additional use of water from the Paso Robles groundwater basin (or portions thereof) was raised at the August 6, 2013 meeting.

Due to the short time period between the board directive and the scheduled hearing date, providing quantified economic impact information was not feasible. In order to produce a quantified economic impact analysis (or analyses), the County would need to implement the following steps, which could require several months to accomplish:

1. Identify numerous assumptions to guide the analysis, such as:
 - a. The degree to which the proposed ordinance would preclude certain types of developments and land uses or impose additional costs in order to offset water use over a maximum potential two-year effective period of the ordinance;
 - b. The number of each type of new development or land use which might be expected to occur over the potential two-year period of the ordinance were it not to be enacted, given recent market conditions;
 - c. The type (or types) of economic impact information desired (business output or sales, value added to the economy, wealth such as property value, personal income such as wages, or jobs).
2. Then the County could proceed to fund and procure services of a qualified firm to assist in prepare the analysis (or analyses).

It is important to recognize that economic effects could also result from a continued decline in groundwater levels and possible reductions in water quality. Those effects could include costs to drill wells deeper, increased costs to pump water for all uses, and ultimately, loss of property values due to a lack of an adequate water supply.

Conservation Programs

Conservation programs that would stop water waste were raised as a possible idea for an Urgency Ordinance on August 6, 2013. Los Angeles (LA) County's ordinance was referenced as an example. In 2008, LA County adopted an Urgency Ordinance (Attachment 2E) that prohibited hosing down sidewalks, limited when landscaping could be watered, required inspection for leaks both indoors and out, prohibited vehicle washing, required that restaurants not serve water unless water was requested, and that decorative fountains use a recirculation system. Public Health Inspectors, who were already in the field, were used to provide enforcement which included writing infractions for violation.

In addition, staff found a Model Water Conservation Ordinance that was prepared by the Metropolitan Water District of Southern California dated January 2009 (Attachment 2F). The Metropolitan Water District of Southern California is a consortium of 26 cities and water districts that provides drinking water to nearly 19 million people in parts of Los Angeles, Orange, San Diego, Riverside, San Bernardino and Ventura counties. It does not appear that the District has adopted an ordinance following the model ordinance. It could have been developed for the cities and water districts to use. It also contains the same types of conservation measures outlined in the LA County Urgency Ordinance as permanent requirements. The model ordinance then goes on to define more stringent limitations based on a series of Water Supply Shortage Levels including limits on building permits and requirements for offsets.

Both of these conservation ordinances are focused on residential and commercial development in urban areas and do not appear to address rural conservation or agriculture. In addition, both agencies have significant resources available for enforcement within the urban areas where they would apply. Within an Urgency Ordinance your Board could consider adding certain programs that would limit water waste in the Basin. Staff has suggested some ideas using the LA County Urgency Ordinance (Attachment 2D). Enforcement of these conservation measures would be difficult if not impossible without a significant increase in the number of enforcement personnel and providing that personnel the authority to issue citations for violations of the ordinance.

Stakeholder Involvement

Although the timeframe between when the Board provided direction on August 6th and when this staff report was required to be completed was short, staff did attempt to obtain input from interested stakeholders. On August 9, 2013, an email was sent to groups that had corresponded or testified at the August 6, 2013 County of San Luis Obispo Board of Supervisors meeting asking for comments by noon on August 14, 2013. The Blue Ribbon Committee, the Water Resources Advisory Committee and the Agricultural Liaison Advisory Board were also included. Although the proposed Urgency Ordinances had not yet been prepared, the Board's direction was outlined in the email. At the time of preparation of this report, staff had received comments from a number of stakeholders. All comments received prior to August 14 are included as Attachment 2G. The following are a summary of comments relating to the provisions of the ordinance:

- Ban on agricultural ponds is unacceptable. They are a necessary tool in balancing water availability and flow rates with crop needs. Agricultural ponds should not be lined to allow for percolation and should be available to capture rain run-off. Water is only pumped into the ponds during the winter and used for frost protection which allows that water to percolate back into the ground as the plants use little water during their dormant period.
- New large agricultural ponds should not be permitted as pumping to fill and maintain these large ponds is straining the available water resources.
- Well reporting should include well depth at start of new well, once 3 – 5 foot drop is detected, pumping should be required to stop.
- Metering of all new wells will allow the County to collect important water use data that can be used to verify assumptions used in modeling. Measuring water use is an essential first step in improving efficiency.
- Require reporting of meter readings twice a year.
- Urgency ordinance should include the budget and authority for Public Works to review and verify reported well problems.
- Urgency ordinance should apply to the entire basin.

- Urgency ordinance should only apply to the most impacted area.
- Offsets should be real and verifiable. Urgency ordinance should require that the conversion is in place prior to the new water uses being allowed.
- Offsets should not include simply paying into a mitigation fund for future projects.
- Offset ratios of greater than 2:1 should be considered.
- 2:1 Offset is unrealistic and cost prohibitive for agriculture.
- Ban the use of overhead sprinklers in the Urgency Ordinance as part of a conservation strategy.
- Do not ban over water applications as it will not save very much water.
- Existing wells should not be required to be destroyed when a replacement well is drilled. Instead, require that the total consumption of groundwater not increase.
- Urgency ordinance should instead prohibit the issuance of permits for water wells in the basin.
- Include the practice of inter-planting between existing vines in established vineyards in the definition of expansion of irrigated crop production.
- Have the provisions of the urgency ordinance apply retroactively back to August 6, 2013.
- Issuance of a well permit be used to allow for future irrigated agriculture to be considered in the pipeline and not subject to the Urgency Ordinance.
- Well pumps over a certain size should have limits on the amount of noise and vibration they can generate.
- Options should be considered for allotment of water based on acreage that overlies the main basin. Set aside the water needs of rural residential development, then allot the remainder of the safe yield based on soil types. Individuals not using their allotment could lease their allotment to irrigated agriculture in a market based system.
- Apply best management practices to existing irrigated agriculture.

OTHER AGENCY INVOLVEMENT/IMPACT

Staff from County Counsel's office, Public Works, Environmental Health, Agricultural Commissioner's Office and County Administration have participated in meetings regarding the Paso Robles Groundwater Basin and the proposed Urgency Ordinance. The proposed ordinance was prepared in consultation with County Counsel and has been approved as to form and codification.

FINANCIAL CONSIDERATIONS

The Urgency Ordinance was prepared under the Department's current budget. Implementation of the ordinance may have budget and staffing impacts that will need to be determined.

RESULTS

Adoption of the urgency ordinance will establish an Urgency Ordinance for a period of 45 days.

ATTACHMENTS

Attachment 2A – Proposed Urgency Ordinance Basin Wide
Attachment 2B - Proposed Urgency Ordinance Area of Concern
Attachment 2C – Estimate of Groundwater Demand and Savings
Attachment 2D – Conservation Urgency Ordinance Ideas
Attachment 2E – LA County Water Wasting Ordinance
Attachment 2F - Metropolitan Water District of Southern California Model Water Conservation Ordinance
Attachment 2G – Stakeholder Comments